


Memorandum

To: Honorable John Chiang, Chair
Honorable Claude Parrish, Vice Chairman
Ms. Betty T. Yee, Acting Board Member
Honorable Bill Leonard
Honorable Steve Westly

Date: November 13, 2006

From: Kristine Cazadd 
Chief Counsel

Subject: **Board Meeting – November 20, 2006**
Chief Counsel Matters – Item J3

Report and Recommendation to Adopt the Rules for Tax Appeals

I. Status and Proposed Recommendation

The Board of Equalization *Rules for Tax Appeals* (RTA) are the result of a year long effort to compile the Board's current procedures and practices for handling all property tax matters, business taxes and fees appeals, and appeals from the Franchise Tax Board (FTB); refine those procedures to make them more efficient and understandable; address various procedural issues; and determine which practices are best suited to being promulgated as regulations. The Rules for Tax Appeals are intended to bolster the public nature and openness of the Board's operations, promote taxpayer accessibility to Board Members, and allow for the free flow of information in a manner that will allow the Board to continue to be fair and effective in its decision-making. The Rules for Tax Appeals will also guarantee a fair hearing and equal due process for all taxpayers, ensure that all taxpayers have a plain, speedy, and adequate remedy available to them as required by law, and thereby improve the Board's relationship with taxpayers and the public. Staff will recommend the Rules for Tax Appeals for adoption and publication at the November 20, 2006, Board meeting.

II. History

Staff provided the public with notice of the project in July 2005, released the first drafts of all five chapters of the Rules for Tax Appeals in mid-September 2005, and then discussed the drafts with the Board and the interested parties in detail at the September 28, 2005, Board meeting. Following that meeting, each chapter followed its own timeline. The entire process culminating in the Rules for Tax Appeals included eight (8) interested parties meetings, six (6) Board meetings, and numerous drafts of each chapter.

III. Contents of the Rules for Tax Appeals

Chapter 1 contains the name for the Rules for Tax Appeals, and provides a clear statement of the Board's intent for their implementation, which is to improve the Board's relationship with tax and fee payers. **Chapter 2** codifies the Board's existing practices for handling all the various types of business taxes and fees appeals, and was recently revised to clarify the references to Board staff and Board subdivisions. **Chapter 3** codifies the Board's current practices for handling property tax appeals, and improves the current process by requiring appeals conferences in all property tax appeals scheduled for an oral hearing, and allowing for appeals conferences in non-appearance matters. **Chapter 4** codifies the Board's existing practices for handling appeals from the FTB, and adds new procedures permitting non-appealing spouses to materially participate in innocent spouse appeals and new procedures for holding discretionary prehearing conferences that can be used to better develop the facts and issues raised in complicated or complex appeals. **Chapter 5** codifies the Board's existing practices for conducting oral hearings and deciding appeals in all of the Board's tax and fee programs. Chapter 5 also contains three alternative provisions for section 5000.5015.1, regarding communications with Board Members, and three alternative provisions for section 5000.5033.2 regarding the use of closed sessions to hear confidential information pertaining to certain property tax appeals and all business taxes and fees appeals.

A. Alternatives for Section 5000.5015.1

The first alternative for section 5000.5015.1 contains staff's recommended language, which codifies the Board's longstanding policy permitting interested persons to communicate with the Board Members at any time. The second alternative was recommended by FTB Chief Counsel John Davies and restricts communications regarding appeals from the Franchise Tax Board. The third alternative was recommend by Lenny Goldberg of the California Tax Reform Association and restricts communications with regard to all types of appeals. Staff believes that the second and third alternatives would be difficult to administer, are not required by law, and are inconsistent with current practice.

B. Alternatives for Section 5000.5033.2

The first alternative for section 5000.5033.2 contains staff's recommended language, which permits the Board to utilize closed sessions to hear trade secrets or other confidential research, development, or commercial information the disclosure of which will cause unwarranted annoyance, embarrassment, or oppression as initially determined by the Board Chair, and utilizes language borrowed from Code of Civil Procedure section 2031.060 regarding protective orders. Staff prepared the second alternative for Board Member Yee. The second alternative permits the Board to utilize closed sessions to hear trade secrets as defined in the Uniform Trade Secrets Act (Civ. Code, §§ 3426 et seq.) in conformity with the trade secret privilege provided for in Evidence Code section 1060. The Uniform Trade Secrets Act provides that the term "trade secret" "means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: "(1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy." (Civ. Code, § 3426.1, subd. (d).) Evidence Code section 1060 provides that

the trade secret privilege only applies when “allowance of the privilege will not tend to conceal fraud or otherwise work injustice.” The third alternative was recommended by Lenny Goldberg of the California Tax Reform Association. The third alternative permits the Board to utilize closed sessions to hear trade secrets, only when the term “trade secrets” does not include any “financial information revealed in the course of an appeal” or does not include any “confidential information that is necessary to the adjudication of the case.”

III. Recommendation

Staff will recommend that the Board approve the publication of all five chapters of the Rules for Tax Appeals, and staff’s recommended alternatives for sections 5000.5015.1 and 5000.5033.2, at the November 20, 2006, Board meeting.

Attachments: Agenda for November 20, 2006, Board Meeting
 Cross-Reference Guide from the Rules of Practice to the Rules for Tax Appeals
 Flowcharts of the Appeals Processes in the Rules for Tax Appeals
 Index to Rules for Tax Appeals
 Rules for Tax Appeals (Clean, and Strikethrough and Underline Versions)
 Responses to Interested Parties’ Comments

KC:ef

cc: Mr. Ramon Hirsig, MIC: 73
 Mr. David Gau, MIC: 63
 Ms. Anita Gore, MIC: 86
 Ms. Randie L. Henry, MIC: 43
 Ms. Karen Johnson, MIC: 69

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bcc: Mr. Alan LoFaso MIC:71
 Mr. Neil Shah MIC:77
 Mr. Tom Hudson MIC:78
 Mr. Chris Schutz MIC:72

Ms. Marcy Jo Mandel
Deputy Controller
600 Corporate Point, Suite 1000
Culver City, CA 90230